

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GAIL LOWE,

Plaintiff-Appellant,

v

GEORGE BARBER,

Defendant-Appellee.

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UNPUBLISHED

August 3, 2001

No. 219123

Macomb Circuit Court

LC No. 96-003570-NI

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent and would reverse and remand for a new trial because I believe that the jury's finding that defendant was not negligent is against the great weight of the evidence.

In this automobile accident case, plaintiff was driving her vehicle southbound on Harper Road and entered a left turn lane to make a left turn onto Thirteen Mile Road. Defendant, meanwhile, exited a parking lot on the west side of Harper and struck plaintiff's vehicle as he attempted to turn left into the northbound traffic. The intersection at Harper and Thirteen Mile Roads has a traffic light and there is a separate light for traffic on Harper attempting to make a left turn.

According to plaintiff, she was traveling about fifteen to twenty miles an hour and was approaching a red light in her left turn lane. The light for traffic continuing on Harper, however, was green. Defendant exited the parking lot while the light was green for the traffic on southbound Harper and forced other vehicles to stop for him while he attempted to turn left and proceed northbound on Harper. As defendant tried to enter northbound Harper, he struck plaintiff's vehicle. A photograph of plaintiff's vehicle, admitted at trial, shows that the vehicle was damaged to the right front, around the right tire, and to the front of the passenger door.

Defendant's version of events was somewhat different. It was defendant's theory or defense of the case that plaintiff "prematurely" entered the left turn lane and that defendant struck plaintiff's vehicle because she was in the left turn lane too early. Defendant claimed that as he exited the parking lot, the light at the intersection for Harper traffic was red and that vehicles were stopped to his left. The vehicles on southbound Harper motioned for defendant to go through, he glanced to check traffic to his right (northbound traffic on Harper) and as he proceeded to enter the northbound traffic, he struck plaintiff's vehicle. Other photographs

admitted at trial show that there is a solid white line for traffic on Harper turning left on Thirteen Mile Road. This solid white line then becomes a broken white line further north of the traffic signal. According to defendant, he was attempting to turn left into northbound Harper traffic where the line was broken and not solid and the photographs support this testimony that the line is indeed broken at the parking lot area. However, contrary to defendant's contention that plaintiff prematurely entered the left turn lane, she could not have waited until the solid white line to enter the left turn lane because changing lanes over a solid white line in the road constitutes a traffic violation. Moreover, defendant admitted at trial that the police officer's explanation of the accident did not comport with defendant's explanation, but instead supported plaintiff's version of events.

In deciding a motion for a new trial on the basis that it is against the great weight of the evidence, it is certainly true that the determination of credibility is within the province of the jury. *Bosak v Hutchinson*, 422 Mich 712, 740; 375 NW2d 333 (1985). However, I must respectfully disagree with the majority that this case was a mere credibility contest. The physical evidence of this case did not support defendant's testimony in any way. By all accounts, defendant pulled out into traffic on Harper from a parking lot and struck plaintiff's vehicle as she was traveling in the left turn lane approaching Thirteen Mile Road. Defendant clearly failed to yield the right of way to plaintiff and there is absolutely no basis for defendant's contention that plaintiff "prematurely" entered the left turn lane. The jury's finding that defendant was not negligent is against the great weight of the evidence because the evidence clearly preponderates against such a finding.

Because the evidence of this case simply does not support the jury's finding, I would reverse the trial court's denial of plaintiff's motion for a new trial and remand for a new trial concerning the issue of damages.

/s/ Kathleen Jansen